

1 THE HONORABLE RICHARD A. JONES  
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13 UNITED STATES DISTRICT COURT  
14 WESTERN DISTRICT OF WASHINGTON  
15 AT SEATTLE

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17 COSTCO WHOLESALE CORP.,  
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19 Plaintiff,  
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21 v.  
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23 AU Optronics Corp., et al.,  
24  
25 Defendants.  
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No. 2:13-cv-01207-RAJ

STIPULATION AND ORDER  
REGARDING AWARD OF ATTORNEYS'  
FEES AND COSTS TO PLAINTIFF  
COSTCO WHOLESALE CORPORATION

28 The court GRANTS the parties' stipulation (Dkt. # 691) regarding attorney fees, and  
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30 commends them for their efforts in reaching a resolution of this issue.

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32 **STIPULATION**  
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34 WHEREAS, on October 23, 2014, a jury verdict was rendered on behalf of Plaintiff  
35 Costco Wholesale Corporation ("Costco") in the United States District Court for the Western  
36 District of Washington in the above-captioned action (this "Action");

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38 WHEREAS, based on the jury's October 23, 2014 verdict and the Court's June 4, 2015  
39 order, the Court entered judgment in this Action for Plaintiff Costco and against Defendants LG  
40 Display Co., Ltd. and LG Display America, Inc. (collectively "LGD") and AU Optronics  
41 Corporation and AU Optronics Corporation America (collectively "AUO") for \$61,971,040 on  
42 June 4, 2015;

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1           WHEREAS, based on the June 4, 2015 judgment, Costco has asserted that it is entitled to  
 2 recover the costs of suit, including reasonable attorneys' fees, from LGD and AUO under  
 3 Section 4 of the Clayton Act, 15 U.S.C. § 15 and the Washington Consumer Protection Act,  
 4 RCW 19.86, and intends to file motions for fees and costs under Federal Rule of Civil Procedure  
 5 54(d)(1) & (2);  
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7           WHEREAS, LGD and AUO dispute Costco's claimed fees and costs;

8           WHEREAS, LGD and AUO have filed post-judgment motions pursuant to Federal Rules  
 9 of Civil Procedure 50 and 59 and all parties anticipate that further attorneys' fees and costs will  
 10 be incurred in connection with those motions and subsequent proceedings;

11          WHEREAS, Costco, LGD and AUO have met and conferred in an attempt to reach a  
 12 compromise agreement on the amount of fees and costs through and including June 12, 2015,  
 13 that should be awarded to Costco pursuant to the June 4, 2015 judgment;

14          WHEREAS, to avoid unnecessarily burdening this Court with additional motions under  
 15 Fed. R. Civ. P. 54(d)(1) & (2), and to resolve their differences over the matters set forth above  
 16 without admitting or agreeing to the contentions advanced by any other party, Costco, LGD, and  
 17 AUO have agreed to a compromise as set forth herein;

18          NOW THEREFORE, the parties hereby stipulate as follows:

19          1.       Costco, LGD, and AUO stipulate and agree that, as a result of the June 4, 2015  
 20 judgment, Costco shall be awarded the sum of \$10,000,000 United States dollars ("Stipulated  
 21 Amount") to resolve its claims for attorneys' fees and costs incurred through and including  
 22 June 12, 2015.

23          2.       In executing this stipulation, Costco releases LGD and AUO from any and all  
 24 claims of any sort for attorneys' fees and/or costs incurred prior to and including June 12, 2015,  
 25 in and arising from this Action or relating to the alleged price fixing of LCD products that was  
 26 the subject of this Action and MDL No. 1827 ("Release"). The Release shall cease to have  
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1 effect in the circumstances set forth in Paragraph 3. Costco retains all claims arising from fees  
2 and costs it incurs in this Action after June 12, 2015.  
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5       3. In the event that (i) a new trial is granted in whole or in part, (ii) a judgment as a  
6 matter of law is granted in whole or in part in favor of LGD or AUO, or (iii) the June 4, 2015  
7 judgment is modified or reversed in whole or in part by any court on appeal, the parties agree as  
8 follows:  
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11           (a) The compromise memorialized in this stipulation shall be abrogated and this  
12 stipulation shall not be binding on Costco, LGD, or AUO, with the exception of Paragraphs 4  
13 and 5 below.  
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16           (b) The Release shall be of no force and effect and Costco, AUO and LGD shall  
17 thereafter be entitled to bring any motions on Costco's fees and costs within 45 days of either (i)  
18 the order or decision; (ii) receipt of any remand from a court of appeal by the District Court; or  
19 (iii) the parties' retention of a neutral under Paragraph 4, whichever is later, and to make any  
20 claims, arguments and contentions, regarding Costco's attorneys' fees and costs incurred on or  
21 before June 12, 2015, as could have been made had the stipulation never been executed.  
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24           (c) The above-identified District Court shall determine on remand or otherwise what,  
25 if any, amounts of costs and attorneys' fees should be awarded to Costco after briefing from the  
26 parties on a timeline determined by the District Court. Nothing in this stipulation shall limit the  
27 scope or amount of fees and costs that may be requested, nor the evidence or contentions that  
28 may be submitted in support of or in opposition to such a request.  
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31           (d) The bond to be posted by LGD and AUO based on the Court's June 16, 2015  
32 order (Dkt. 687) and the parties' stipulation (Dkt. 686) includes appropriate security for the  
33 Stipulated Amount. In the event that Costco has received any payment of attorneys' fees or costs  
34 from LGD or AUO, Costco shall within 45 days of any order or decision under Paragraph  
35 3(i)-(iii) reimburse LGD and AUO the full amount of the attorneys' fees and costs paid.  
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1           4. In the event the District Court lacks jurisdiction to award fees and/or costs  
 2 following a decision by a court of appeal or otherwise under Paragraph 3(c), the parties stipulate  
 3 and agree that the amount, if any, of fees and costs to be awarded to Costco shall be decided in  
 4 binding arbitration by a mutually acceptable neutral at JAMS. The arbitrator may not award any  
 5 fees or costs to Costco that could not have been awarded by the District Court in the first  
 6 instance had the stipulation never been executed.

7           5. This stipulation shall have no bearing on any supplemental claims by Costco for  
 8 fees and costs incurred after June 12, 2015, shall not affect Costco's right to submit a cost  
 9 memorandum or motions seeking such post-June 12, 2015 fees or costs, contains no agreement  
 10 concerning those supplemental fees or costs, and shall not be relied upon by any party in any  
 11 proceeding regarding the entitlement to or proper amount of fees and costs incurred after said  
 12 date.

13           6. This agreement is null and void in the event the Court does not accept the  
 14 stipulation as agreed by the parties, in which case Costco shall have until 14 days after the Court  
 15 issues a final decision on all post-judgment motions to file motions for attorneys' fees and costs  
 16 under Fed. R. Civ. P. 54(d)(1) & (2) and Local Civil Rule 54(d).

17           IT IS SO STIPULATED.

18           Dated: July 14, 2015

19           s/David J. Burman

20           David J. Burman, WSBA No. 10611  
 21           Cori G. Moore, WSBA #28649  
 22           Eric J. Weiss, WSBA #44807  
 23           Nicholas H. Hesterberg, WSBA #41970  
 24           Steven D. Merriman, WSBA #44035  
 25           PERKINS COIE LLP  
 26           1201 Third Avenue, Suite 4900  
 27           Seattle, WA 98101-3099  
 28           Telephone: 206.359.8000  
 29           Facsimile: 206.359.9000  
 30           Email: DBurman@perkinscoie.com  
 31           CGMoore@perkinscoie.com  
 32           EWeiss@perkinscoie.com  
 33           NHesterberg@perkinscoie.com  
 34           SMerriman@perkinscoie.com  
 35           Attorneys for Plaintiff Costco Wholesale Corp.

36           **Perkins Coie LLP**  
 37           1201 Third Avenue, Suite 4900  
 38           Seattle, WA 98101-3099  
 39           Phone: 206.359.8000  
 40           Fax: 206.359.9000

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s/Rudy A. Englund  
Rudy A. Englund, WSBA #04123  
Erin M. Wilson, WSBA #42454  
LANE POWELL PC  
1420 Fifth Avenue, Suite 4200  
P.O. Box 91302  
Seattle, WA 98111-9402  
Telephone: (206) 223-7000  
Facsimile: (206) 223-7107  
E-mail: EnglundR@LanePowell.com  
WilsonEM@LanePowell.com

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s/Brad D. Brian  
Brad D. Brian (*pro hac vice*)  
Susan E. Nash (*pro hac vice*)  
Kyle W. Mach (*pro hac vice*)  
Christopher M. Lynch (*pro hac vice*)  
MUNGER, TOLLES & OLSON LLP  
355 South Grand Avenue  
Los Angeles, CA 90071-1560  
Telephone: (213) 683-9100  
Facsimile: (213) 687-3702  
E-mail: brad.brian@mto.com  
susan.nash@mto.com  
kyle.mach@mto.com  
christopher.lynch@mto.com  
*Attorneys for Defendants LG Display Co., Ltd.  
and LG Display America, Inc.*

s/David C. Lundsgaard  
David C. Lundsgaard, WSBA #25448  
**MILLER NASH GRAHAM & DUNN, LLP**  
Pier 70, 2801 Alaskan Way, Suite 300  
Seattle, WA 98121-1143  
Telephone: (206) 340-9691  
Facsimile: (206) 340-9599  
Email: david.lundsgaard@millernash.com

s/Christopher A. Nedeau  
Christopher A. Nedeau (*pro hac vice*)  
Carl L. Blumenstein (*pro hac vice*)  
NOSSAMAN LLP  
50 California Street, 34th Floor  
San Francisco, CA 94111  
Telephone: (415) 398-3600  
Facsimile: (415) 398-2438  
Email: [cnedea@nossaman.com](mailto:cnedea@nossaman.com),  
[cblumenstein@nossaman.com](mailto:cblumenstein@nossaman.com)  
*Attorneys for Defendants AU Optronics  
Corp. and AU Optronics Corporation America*

## **ORDER**

This matter comes before the Court on a stipulation between and among Costco, LGD and AUO to an amount of fees and costs that are to be awarded to Costco under Section 4 of the Clayton Act, 15 U.S.C § 15, and the Washington Consumer Protection Act, RCW 19.86, and as a result of the judgment entered in this Action on June 4, 2015 for Costco and against Defendants LGD and AUO for \$61,971,040. The Court understands this stipulation to be a compromise agreement among the parties with regard to fees and costs claimed by Costco for the period prior to and including June 12, 2015.

As a result of the June 4, 2015 judgment, and pursuant to the foregoing stipulation, the Court hereby ORDERS:

1. With respect to the fees and costs incurred prior to and including June 12, 2015, Costco is entitled to recover the costs of suit, including reasonable attorneys' fees, in the amount of \$10,000,000 United States dollars from remaining defendants LG Display Co., Ltd. and LG Display America, Inc. (collectively "LGD") and AU Optronics Corporation and AU Optronics Corporation America (collectively "AUO") under Section 4 of the Clayton Act, 15 U.S.C. § 15 and the Washington Consumer Protection Act, RCW 19.86.

2. The Court accepts the other terms of the stipulation.

3. Costco may file motions for supplemental fees and costs incurred after June 12, 2015, consistent with this Court's July 7, 2015 Order (Dkt. No. 690).

1           4. The Court will enter an amended judgment that incorporates the stipulated  
2 amount of Costco's fees and costs prior to and including June 12, 2015 of \$10,000,000 at the  
3 time it issues its order regarding any fee award and costs for the period after June 12, 2015,  
4 whether that order results from further stipulation or proceedings before a Special Master.  
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7           5. Pursuant to the Court's June 16, 2015 Order (Dkt. No. 687) entered upon the  
8 stipulation of the parties (Dkt. No. 686), no execution shall be made on this award of attorneys'  
9 fees and costs and no further bond shall be required.  
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12           DATED July 16, 2015  
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16           The Honorable Richard A. Jones  
17           United States District Court Judge  
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